TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. ~~495~~. 95

ROBERT HAWES, PLAINTIFF IN ERROR,

vs.

THE STATE OF GEORGIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

FILED JUNE 28, 1920.

(27,782)

(27,782)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 425.

ROBERT HAWES, PLAINTIFF IN ERROR,

vs.

THE STATE OF GEORGIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation and service	4	2
Petition for writ of error	6	2
Assignment of errors	8	4
Præcipe for record	12	7
Bond on writ of error	14	8
Certified copy of order of the court of appeals	15	9
Bill of exceptions	16	9
Judge's certificate	17	10
Clerk's certificate	18	11
Certified copy of pauper affidavit	19	11
Indictment	20	12
Brief of evidence	22	13
Testimony of Ed. Norman	22	13
—— Glaze	22	14
Peyton M. Norton	22	14
Charge of the court	23	15
Motion for new trial and orders thereon	28	18
Amended motion for new trial	29	19
Clerk's certificate	33	21
Opinion of supreme court	34	22
Judgment	37	24
Clerk's certificate	38	24

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 1, 1921.

1 UNITED STATES OF AMERICA, *ss:*

[Seal of the U. S. District Court, N. D. Georgia.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Georgia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Georgia before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between State of Georgia, Defendant in Error and Robert Hawes, Plaintiff in Error wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repug-

2 nant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; a manifest error hath happened to the great damage of the said Robert Hawes as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 27th day of May, in the year of our Lord one thousand nine hundred and 20.

O. C. FULLER,
Clerk United States District Court,
Northern District of Georgia.

Allowed by
WM. H. FISH,
Chief Justice of the Supreme Court
of the State of Georgia.

May 27th, 1920.

Filed in office May 27, 1920.
Z. D. HARRISON,
Cl'k Supreme Court of Ga.

3 [Endorsed:] Supreme Court of the United States, October Term, 191–. Writ of error.

4 UNITED STATES OF AMERICA, *ss:*

To State of Georgia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of State of Georgia, wherein Robert Hawes is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Wm. H. Fish, Chief Justice of the Supreme Court of Georgia, this 27th day of May, in the year of our Lord one thousand nine hundred and twenty.

WM. H. FISH,
Chief Justice of the Supreme Court of Georgia.

5 Due and legal service of the within citation acknowledged—all further notice and service waived. This 21st day of May, 1920.

STATE OF GEORGIA,
By R. C. NORMAN,
Solicitor General.

Filed in office May 27, 1920.
Z. D. HARRISON,
Clk Supreme Court of Ga.

6 ROBERT HAWES, Plaintiff in Error,

v.

THE STATE OF GEORGIA, Defendant in Error.

To the Honorable the Supreme Court of the State of Georgia and to the Honorable William H. Fish, Chief Justice thereof:

The petition of Robert Hawes by his undersigned attorneys respectfully shows:

1. That on the 14th day of April, 1920, the Supreme Court of the State of Georgia made and entered a final judgment herein in favor of the defendant in error, The State of Georgia, against Robert Hawes, in which judgment and the proceedings held prior thereto in this cause certain errors were committed, to the prejudice of this petitioner, all of which more in detail appears from the assignment of errors which is filed with this petition.

2. Robert Hawes further shows that in this action there was drawn in question the validity of a statute of, or the authority exercised under, the State of Georgia, on the ground of their being repugnant

to the Constitution, treaties or laws of the United States, and the decision was in favor of the validity of the said statute and authority, and that therein manifest error happened, to the prejudice of the said Robert Hawes.

3. Petitioner further shows that the Supreme Court of the State of Georgia is the highest court of the State of Georgia in which a decision in this action and proceeding could be had.

Wherefore, the said Robert Hawes prays that a writ of error may issue in this behalf from the Supreme Court of the United States to the Supreme Court of the State of Georgia for the correction of the errors so complained of, and that a transcript of the records,
7 proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

This 27th day of May, 1920.

C. D. COLLEY,
P. O. Address Washington, Ga.;
A. G. POWELL,
MARION SMITH,
P. O. Address Atlanta, Ga.,
Attys. for Robert Hawes.

7½ In the Supreme Court of the State of Georgia.

ROBERT HAWES, Plaintiff in Error,

v.

THE STATE OF GEORGIA, Defendant in Error.

This, the 27th day of May, 1920, came the plaintiff in error, Robert Hawes, by his attorneys, and filed herein and presented to this court his petition, praying for the allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Georgia intended to be urged by him; praying also that a transcript of the record and proceedings upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such further order and proceedings may be had as may be proper in the premises.

On consideration hereof, this court being the court rendering the judgment complained of, the undersigned, as Chief Justice of said court, does hereby allow the writ of error, the plaintiff giving and filing herewith an approved bond according to law in the sum of Five Hundred Dollars, which shall operate as a supersedeas bond, and the said writ of error to operate as a supersedeas.

In witness whereof, this order allowing this writ of error is signed by Wm. H. Fish, Chief Justice of the Supreme Court of the State of Georgia, this 27th day of May, in the Year of our Lord One

Thousand Nine Hundred and Twenty, in the City of Atlanta, Georgia.

WM. H. FISH,
Chief Justice, Supreme Court of the State of Georgia.

Filed in office May 27, 1920.
Z. D. HARRISON,
Clk. Supreme Court of Ga.

8 ROBERT HAWES, Plaintiff in Error,

v.

THE STATE OF GEORGIA, Defendant in Error.

In the Matter of Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of Georgia.

Assignment of Errors.

Plaintiff in error, Robert Hawes, in connection with his petition for writ of error in the above stated case, makes the following assignment of errors which he avers occurred upon the trial of said case and in the judgment of the Honorable, the Supreme Court of the State of Georgia, and which he respectfully submits appear in the record, proceedings, decision and final judgment of said court in said case.

1.

That the Supreme Court of the State of Georgia erred in affirming the judgment of the Superior Court of Lincoln County, wherein Robert Hawes was convicted of the offense of knowingly having distilling apparatus on his premises, in violation of the Act of the General Assembly of the State of Georgia approved March 28, 1917, in that it appeared in this case that the conviction of the said Robert Hawes and the affirmance of said conviction was based upon the decision both of the Superior Court of Lincoln County and the Supreme Court of the State of Georgia to the effect that Section 22 of the said Act of the General Assembly of the State of Georgia wherein it is provided that when apparatus for distilling liquors is found or discovered upon the premises of any person the same shall be prima facie evidence that the person in actual possession had knowledge of the existence of the same, and that the burden of proof of showing the lack of such knowledge shall be shifted to the defendant, was a constitutional and valid statutory provision, said Robert Hawes having insisted and now insisting that the said provision of the statute was violative of the Fourteenth Amendment of the Constitution of the United States, wherein it is provided that no person shall be deprived of life, liberty or property without due process of law.

9

2.

Because the Supreme Court of Georgia erred in holding that Section 22 of the Act of the General Assembly of the State of Georgia approved March 28, 1917, which said Act is set forth in the Acts of the extraordinary session of the General Assembly of the State of Georgia of 1917 on pages 1-19 inclusive, was not violative of the Fourteenth Amendment of the Constitution of the United States and in further holding that the application of the said section of the said Act in the instant case did not deprive the said Robert Hawes of his liberty without due process of law, in violation of the said Fourteenth Amendment of the Constitution of the United States, the said Section 22 being as follows:

"When any such apparatus is found or discovered upon said premises the same shall be prima facie evidence that the person in actual possession had knowledge of the existence of the same, and on conviction thereof, shall be punished as prescribed in Section 16 of this Act, the burden of proof in all cases being upon the person in actual possession to show the want of knowledge of the existence of such apparatus on his premises."

3.

That the Supreme Court of Georgia erred in affirming the judgment of the Superior Court of Lincoln County in holding that the evidence in this case authorized the conviction of Robert Hawes, it appearing that there was no evidence that the said Robert Hawes knew of the presence of the distilling apparatus on his farm and it appearing that the conviction was based upon Section 22 of the Act of the General Assembly of the State of Georgia of March 28, 1917, reported in the Acts of the extraordinary session of the General Assembly of Georgia of 1917 on pages 1-19 inclusive, wherein it is provided that the presence of distilling apparatus upon any person's property shall be prima facie sufficient to convict the person in actual possession of said premises of knowingly having the said distilling apparatus there and placing the burden of proof of lack of knowledge on the defendant, and in affirming said judgment the Supreme Court of the State of Georgia thereby held that the said Act of the General Assembly did not violate the Fourteenth Amendment of the
10 Constitution of the United States, and as applied to Robert Hawes did not deprive Robert Hawes of his liberty without due process of law.

4.

That the Supreme Court of the State of Georgia erred in holding that the Superior Court of Lincoln County did not err in charging the jury that they could convict the said Robert Hawes of the offense with which he was charged upon proof that the distilling apparatus was found upon the premises in which he was in posses-

sion, without proving that he knew of its presence, and that upon such proof the burden of showing the lack of knowledge was upon the defendant, the said charge being based upon Section 22 of the Act of the General Assembly of the State of Georgia approved March 28, 1917, and reported in the Acts of the extraordinary session of the General Assembly of the State of Georgia of 1917, pages 1-19 inclusive, which said Act of the General Assembly and which said section thereof the said Robert Hawes contended and now contends was unconstitutional, void and invalid, in that it violates the Fourteenth Amendment of the Constitution of the United States, and as applied to the said Robert Hawes, deprives him of his liberty without due process of law.

4½.

That the Supreme Court of the State of Georgia erred in holding and adjudicating that the General Assembly of the State of Georgia could constitutionally provide that a person may be convicted of the offense of knowingly having distilling apparatus for distilling intoxicating liquors in his possession, upon proof that the said apparatus was found upon his premises, without proof of knowledge on his part that the said apparatus was there, and that the burden of proof should be upon the defendant to show lack of knowledge, which said provision is contained in Section 22 of the Act of the General Assembly of the State of Georgia, approved March 28, 1917, and reported in the Acts of the extraordinary session of the General Assembly of the State of Georgia of 1917, pages 1-19 inclusive, which said statute the said Robert Hawes respectfully insists is violative of the Fourteenth Amendment of the Constitution of the United States in that it deprives persons of their liberty without due process of law.

11

5.

That the Supreme Court of Georgia erred in holding that Section 22 of the Act of the General Assembly of the State of Georgia, approved March 28, 1917, and reported in the Acts of the extraordinary session of the General Assembly of the State of Georgia of 1917, pages 1-19 inclusive, was not invalid as violating the constitutional provision in the Fourteenth Amendment of the Constitution of the United States, wherein it is provided that no person shall be deprived of life, liberty or property without due process of law.

Wherefore, the said plaintiff in error prays that the judgment of the Supreme Court of the State of Georgia in the case aforesaid be reversed.

This 27th day of May, 1920.

C. D. COLLEY,
P. O. Address Washington, Ga.;
A. G. POWELL,
MARION SMITH,
P. O. Address, Atlanta, Ga.,
Attys. for Robert Hawes.

Filed in office May 27, 1920.
Z. D. HARRISON,
Clk. Supreme Court of Ga.

12 ROBERT HAWES, Plaintiff in Error,

v.

THE STATE OF GEORGIA, Defendant in Error.

Writ of Error from the Supreme Court of the United States to the Supreme Court of Georgia.

Præcipe for Record.

To the Clerk of the Supreme Court of the State of Georgia:

You are directed to incorporate into the transcript of record on the above stated writ of error and to transmit to the Supreme Court of the United States the following portions of the record in said case:

1. The writ of error.

2. The citation and acknowledgment of service.

3. The petition for writ of error.

4. The order allowing the writ of error and directing supersedeas.

5. The bond on writ of error.

6. The assignment of errors.

7. This præcipe.

8. The bill of exceptions.

9. The transcript of record in the Supreme Court of the State of Georgia from the Superior Court of Lincoln County.

10. The opinion of the Supreme Court of the State of Georgia.

11. The judgment of the Supreme Court of the State of Georgia.

Wherever a document is specified, it is intended to include within the specification all entries, certificates, endorsements, acknowledgments and filings endorsed thereon or attached thereto.
This 27th day of May, 1920.

C. D. COLLEY,
A. G. POWELL,
MARION SMITH,
Attys. for Robert Hawes.

13 Service of the above præcipe acknowledged; copy received and further service waived.
This 27th day of May, 1920.

THE STATE OF GEORGIA,
By R. C. NORMAN,
Solicitor-General.

Filed in office May 31, 1920.
Z. D. HARRISON,
Clk. Supreme Court of Ga.

14 In the Supreme Court of the State of Georgia.

ROBERT HAWES, Plaintiff in Error,

v.

THE STATE OF GEORGIA, Defendant in Error.

Know all men by these presents: That we, Robert Hawes, the plaintiff in error, as principal, and S. Wright as surety, are held and firmly bound unto the State of Georgia in the sum of Five Hundred ($500) Dollars to be paid to the said obligee, to the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents, signed and sealed and dated this 27 day of May, 1920.

Whereas, the above named plaintiff in error has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Georgia.

Now, therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute his writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation to be void; otherwise to remain of full force and effect.

ROBERT HAWES. [L. S.]
S. WRIGHT. [L. S.]

Attest:
J. E. CALLAWAY,
Clerk Superior Court W. Co., Ga.

I hereby approve the foregoing bond and the sureties thereon. Supersedeas of the judgment complained of is hereby also ordered.
This 7th day of June, 1920.

WM. H. FISH,
Chief Justice Supreme Court of Georgia.

Filed in office June 8th, 1920.
Z. D. HARRISON,
Clerk.

15 Court of Appeals of the State of Georgia.

Atlanta, August 15, 1919.

The Honorable Court of Appeals met pursuant to adjournment. The following order was passed:

ROBERT HAWES

v.

THE STATE.

This case came before this court upon a writ of error from the superior court of Lincoln county, and upon a record formally certified and transmitted by the clerk of that court; and this court being of the opinion that the case is one of which the Supreme Court and not this court has jurisdiction, the clerk of this court is ordered to dismiss the case from the files and to transmit the bill of exceptions and record to the clerk of the Supreme Court together with a copy of this order.

Court of Appeals of the State of Georgia.

Clerk's Office,
Atlanta, August 15, 1919.

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

[SEAL.] LOGAN BLECKLEY,
Clerk.

16 Motion for New Trial.

GEORGIA,
Lincoln County:

ROBERT HAWES

vs.

THE STATE.

Lincoln Superior Court, from the April Term, 1918.

Be it remembered that on the 25th day of April 1918 there came on to be tried in the Superior Court of said county, Hon. B. F. Walker presiding as judge, the case of the State vs. Robert Hawes, the same being an indictment charging the said Hawes with having and allowing any one to have and possess on his premises apparatus for the distilling and manufacturing of liquors and beverages prohibited by the law. Parties having announced ready and a jury impanelled, the said case went to trial. Upon the trial the evidence

and statement contained in the brief of evidence part of the record in this case, and duly approved by the court, was introduced. The judge charged the jury. Upon this a verdict was rendered finding the defendant guilty of the charge set forth. Whereupon the judge presiding sentenced said defendant to 12 months upon the chain gang and 6 months in jail. The defendant being dissatisfied with said verdict made a motion for new trial which was regularly continued until the 7th day of May 1919. At said date by regular order of the court the said motion was duly and legally amended as set forth in the record. Upon a hearing of said motion as amended and duly approved by the court His Honor Judge B. F. Walker overruled said motion and refused a new trial therein asked. To this ruling and judgment of the court the defendant aforesaid Robert Hawes excepted and now excepts and assigns error upon the same and states that the said judge erred in overruling said motion upon each and every ground contained in the same and in the amendment thereto. The said motion for new trial was filed during the term of court and on the same date the verdict was rendered and the grounds thereof were duly approved.

The movant, said Robert Hawes, specifies the following portions of the record in said case as material to a clear understanding of the errors in this bill of exceptions.

1. The indictment.

17 2. The brief of evidence.

3. The Charge of the Court.

4. The motion for new trial and amendment thereto.

5. The amendment to the motion for new trial.

Now within the time provided by law, and within twenty days of the entry of the judgment overruling said motion for new trial comes the defendant and tenders this his bill of exceptions and prays that the same may be certified as provided by law in order that the errors complained of may be considered and corrected by the Court of Appeals.

COLLEY & COLLEY,
Attorneys for Plaintiff in Error.

P. O. Address: Washington, Georgia.

I do certify that the foregoing bill of exceptions is true, and specifies all of the record and all the evidence material to a clear understanding of the errors complained of; and the clerk of the Superior Court of Lincoln county is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the — term of the Court of Appeals, that the errors alleged to have been committed may be considered and corrected. This 21 day of May 1919.

B. F. WALKER,
J. S. C. T. C.

Due and legal service of the above acknowledged. Copy and all further service waived. May 26, 1919.

R. C. NORMAN,
Sol. Gen.

18 *Clerk's Certificate.*

Clerk's Office, Superior Court of Lincoln County.

Lincolnton, Ga., June 5th, 1919.

I hereby certify that the foregoing is the true original bill of exceptions, filed in this office, in the case therein stated; and that a copy thereof has been made and is now on file in this office.

Witness my signature and the seal of said court hereto affixed, the day and year last above written.

[SEAL.] W. M. CARTLEDGE,
Clerk.

Case No. 10656. Court of Appeals of Georgia. March Term, 1919. Hawes vs. State. Original Bill of Exceptions. Filed in office Jun. 7, 1919. W. E. Talley, D. C. C. A., Ga.

Case No. 1628. October Term, 1919. Supreme Court of Georgia. Hawes versus State. Bill of Exceptions. Filed in office Sept. 5th, 1919. Z. D. Harrison, C. S. C., Ga.

19 GEORGIA,
Wilkes County:

In Lincoln Superior Court, Lincoln County, Ga.

THE STATE

vs.

ROBERT HAWES.

Indictment.

Motion for New Trial.

Personally appeared Robert Hawes defendant in the case of the State vs. Robert Hawes pending in the Superior Court of Lincoln County, Georgia, who on oath says that his counsel has advised him that he has good cause for a writ of error and that from his poverty he is unable to pay the costs or give the security for the eventual condemnation money.

ROBERT HAWES.

Sworn to and subscribed before me this 26th day of May, 1919.

S. D. FANNING,
Ordinary of Wilkes County, Ga.

GEORGIA,
Lincoln County:

Clerk's Office, Superior Court.

I certify that the above and foregoing is a true copy of Pauper Affidavit and that the original is on file in this Office.
Given under my hand and official seal this the 13th day of June, 1919. Filed in Office May the 30th, 6 P. M. 1919.
[SEAL.] W. M. CARTLEDGE,
C. S. C., L. C.

Case No. 10656. Court of Appeals of Georgia. Filed in Office June 16, 1919. Logan Bleckley, C. C. A., Ga.

20 *General Indictment.*

GEORGIA,
Lincoln County:

In the Superior Court of said County.

The grand jurors selected, chosen and sworn for the County of Lincoln, to-wit:

1. A. E. Strother, Foreman;
2. C. W. Harnesberger,
3. J. W. Blackwell,
4. B. N. Smalley,
5. W. H. Estes,
6. W. A. Reid,
7. C. H. Guillebeau,
8. J. L. Groves,
9. R. N. Groves,
10. C. B. Burgess,
11. M. A. Burton,
12. P. P. Ligon,
13. P. S. House,
14. W. A. Dallis,
15. Wilmer Harnesberger,
16. Harvey Fitzgerald,
17. J. V. M. Paradise,
18. J. A. Arnett,
19. J. A. Hardy,
20. S. W. Hawes,

In the name and behalf of the citizens of Georgia, charge and accuse Robert Hawes, of the County and State aforesaid with the offense of Misdemeanor; for that the said Robert Hawes, of the County and State aforesaid, on the 15 day of July in the Year of Our Lord, One Thousand Nine Hundred and Seventeen, with force and arms, did knowingly permit and allow a certain person and

persons to the Grand Jury unknown to have and possess and locate on his premises apparatus, towit, Bear and a furnace, for the stilling and manufacturing of liquors and beverages specified in the act of the General Assembly of Georgia, approved March 28th, 1917, contrary to the laws of the State, the good order, peace and dignity thereof.

E. H. NORMAN,
Prosecutor.
R. C. NORMAN,
Solicitor-General.

Lincoln Superior Court, October Term, 191-.

We the Jury find the Defendant Guilty.

J. E. DEASON,
Foreman.

4/25/19.

21 Lincoln Superior Court, October Term, 1917.

THE STATE
versus
ROBERT HAWES.

Allowing Distillery on Premises.

True Bill.
A. E. STROTHER,
Foreman.
E. H. NORMAN,
Prosecutor.
R. C. NORMAN,
Solicitor-General.

We the Jury find the Defendant Guilty.
J. E. DEASON,
Foreman.

4/25/1918.

22 THE STATE
vs.
ROBERT HAWES.

Indictment and Conviction in Lincoln Superior Court, April Term, 1918.

Brief of Evidence.

ED NORMAN for the State, swore, I know the defendant and identify him in court. In company with — Glaze and I went to the

farm of defendant in 1918. We searched his premises and found thereon an apparatus for stilling. It was not running but had been run. It was on the premises rented by defendant. It was located about — hundred yard- from his house. It was across a pasture from his house where he dwelt. The pasture intervened and then a hill with pines growing on it, thence there was a descent down a hill to where the still was located. It could not have been seen from the house, but smoke rising from it could have been seen. There was across the pasture a path leading toward the still. This may have been made by cattle or stock. This apparatus consisted of a still and bobes and barrels which are usually used in stilling whiskey.

—— GLAZE for State swore, I went to this place of defendant's at the time mentioned. I saw the apparatus. It consisted of a still, boxes, barrels and such things used in making whiskey. It was on the premises rented by defendant about 300 hundred yards from his house. A pasture intervened between the house and the still. There was a fence around the pasture. There was a path that went by the still. There was a path beyond the fence that came to defendant's house and went toward the still and there were some sticks of stove wood on the path to defendant's house and the path to the still.

PEYTON M. NORMAN, for defendant swore, I have known this locality for 20 years. These paths described are old paths and have ever since I have known them been as described. I know the general reputation and character of defendant in the county where he lives, it is good for peaceableness and law abiding and in all respects.

We agree that this brief of evidence is correct.

R. C. NORMAN,
Sol. Gen.

This Brief of Evidence in the above case approved as correct.

B. F. WALKER,
J. S. C. T. C.

May 5th, 1919.

23 In Lincoln Superior Court, April Term, 1918.

THE STATE
vs.
ROBERT HAWES.

Having Distillery on Premises.

Tried Before Hon. B. F. Walker at Lincolnton, Ga., — Day of April, 1918.

Appearances:

For the State: R. C. Norman, Solicitor General.
For the Defendant: Colley & Colley and John T. West.

Charge of the Court.

GENTLEMEN OF THE JURY:

The Grand Jury of this county have returned a true bill of indictment against this defendant in which they charge him with the offense of a misdemeanor, that is the charge against him under the law, and that I will now read to you:

"Be it further enacted by the authority aforesaid, That it shall be unlawful for any corporation, firm or individual in this State to knowingly permit or allow any one to have or possess or locate on his premises any apparatus for the distilling or manufacturing of the liquors and beverages specified in this act, such as are set out in the indictment."

Under the law this defendant enters the trial of this case with the presumption *on* innocence in his favor and this presumption remains with him and around him throughout the entire trial of the case unless it is met and overcome by evidence on the part of the State and such evidence as satisfies your mind beyond a reasonable doubt of the guilt of the defendant.

The burden to produce the proof to make good the material allegations as made and alleged in the indictment in this case is upon the State and not the defendant. It is entirely within your province Gentlemen to determine what evidence has been introduced in the trial of this case and also what weight and credit you should give that evidence at the time you come to pass upon the issues in the case, that is the issues made and formed by the charge as set
24 out and alleged in the indictment against the defendant and his plea of not guilty thereto, that is the issue you are now and here empaneled and sworn to try. The rules to govern you are these;

The witnesses are required by law to appear in open court and testify before the court and jury and the defendant. You have the right to observe their demeanor on the stand, the witnesses' manner of testifying, their intelligence, their means and opportunities of knowing the facts to which they testified, and the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear from the trial of the case. The jury may also consider the number of witnesses, though the preponderance is not necessarily with the greater number, or any other fact that in the mind of the jury is calculated to bias or prejudice any witness or witnesses testifying shall be by you considered.

Now if there should be any apparent conflict in the testimony of any witness or witnesses testifying, reconcile the conflict so as to give credit to all the witnesses testifying testimony if you can, without imputing perjury to anyone. If you cannot do so, then look to the evidence, facts and circumstances of the case, the law as given you in charge by the court, the defendant's statements and from it all

glean the truth and where you find the truth, there let your verdict rest.

The defendant in this case, as he has the right in law to do, has appeared before you and made a statement in explanation of the charge made and alleged against him in the indictment. Under the law you are authorized to give that statement just such weight and credit as you deem it is entitled to. You may believe it in preference to the sworn testimony in the case, act upon it and acquit the defendant. The laws equally authorize you to reject it in its entirety and receive it in no part whatever or, the law authorizes you to believe it in part and reject it in part. As aforesaid gentlemen, give that statement just such weight and credit as you deem it is entitled to receive.

After going over all evidence, facts and circumstances of the case, applying the rules of law given you in charge thereto and the
25 defendant's statements if you have a reasonable doubt resting upon your minds as to the guilt of the defendant as charged in the indictment, you must give the benefit of that doubt and acquit him. But, you will understand, now and here gentlemen of the jury that by a reasonable doubt I do not mean some mere vague conjecture or possibility but such a doubt as arises in the mind of an honest juror seeking for the truth and leaves it wavering and doubtful. It may arise from having heard the case; from a want, weakness or insufficiency of the evidence. In this connection gentlemen, you will understand the law does not require you to find this defendant guilty to a mathematical certainty before you can convict him; all that the law requires is that you find the defendant guilty to a moral and reasonable certainty, all that the law requires gentlemen is moral and reasonable certainty.

If after going all over all the facts, evidence and circumstances of the case, the defendant's statement, applying the rules of law given you in charge thereto, if you should then find the defendant guilty and that to a moral and reasonable certainty, then, in that event you should find the defendant guilty. If you do not so find, then it would equally be your duty to acquit the defendant in the case.

I charge you gentlemen that any evidence of good characters is not only to be considered as circumstantial as it is always admissible and relevant. It of itself may be sufficient to generate in the minds of the jury a reasonable doubt as to the guilt of the defendant and thereby acquit Deft., and it should also be considered by the jury along with all the other evidence facts and circumstances of the case in determining the innocence or guilt of Defendant. Of course if you find from all the evidence, facts and circumstances of the case applying the rules of law given you in charge and that beyond a reasonable doubt the Defendant guilty then you should so find though there may be evidence of good character.

The charge made and alleged in the indictment is that any person who shall knowingly permit anyone to have or allow anyone to have on his premises any apparatus for the distilling or manufacturing of the liquors and beverages specified in this act. That is
26 all that he is now charged with, knowing who had it there or who operated it. Now when any such apparatus is found or

discovered upon said premises the same shall be prima facie evidence that the person in actual possession had knowledge of the existence of the same and on conviction of the same shall be punished as prescribed in Section 16 of this Act, the burden of proof in all cases being upon the person in actual possession to show the want of knowledge of the existence of such apparatus on his premises. All that the State is required to show in this case on which you could rest a verdict is to show these apparatus were for the manufacture of the liquor made and set out in the indictment and were on the premises of this defendant and this was in the county of Lincoln and that was within two years prior to the finding of this indictment. When the State shows that, stopping there that makes out a prima facie case against defendant you would find the defendant guilty as charged in the indictment. When the state shows these facts to your mind to a moral and reasonable certainty you would find the defendant guilty unless the defendant shows to you that it was there without his consent and knowledge. That burden is on the defendant and not upon the State. It is not for the State to show you who was operating this apparatus but all they have got to show you is that is was operated on this defendant's premises. Then of course if the defendant shows you that this apparatus was operated on his premises without any knowledge on his part, that would be a good defense and you would in that event acquit the defendant. Now, if you should find these apparatuses were on the premises of the defendant that burden would be cast upon him.

You take this case gentlemen, look to all the evidence, facts and circumstances, applying all the rules of law given you in charge thereto by the court, — the defendant's statement and then if you should find the defendant guilty the form of your verdict would be, "We, the Jury, find the defendant guilty." If you do not so find or if you have such a doubt as afore explained to you resting in your mind, then you would find the defendant not guilty and the form of your verdict would be, We, the Jury, find the defendant not guilty. Retire gentlemen and make your verdict.

27 The within and foregoing charge of the Court in the case of the State of Georgia versus Robert Hawes is hereby approved as being true and correct the same is ordered filed as a part of the record in said case.

This the 5th day of May 1919.

B. F. WALKER,
J. S. C. T. C.

28 Lincoln Superior Court, April Term, 1918.

STATE

VS.

ROBERT HAWES.

Allowing Still on Premises.

Verdict *of the* Guilty.

Defendant in the above stated case being dissatisfied with the verdict in above stated case moves the court to set aside same and grant to him a new trial upon the following grounds:

1st. Because said verdict is contrary to law.

2nd. Because said verdict is contrary to the evidence.

Also moves that a rule nici be issued requiring R. C. Norman, Sol. Gen., to be and appear at such time and place as you may decide, why motion should not be granted and a new trial ordered.

F. H. COOLEY AND
JOHN T. WEST,
Defendant's Attorneys.

The above motion read and considered ordered that R. C. Norman, Sol. Gen., show cause before me at Crawfordville, on the Fourth Monday of May, 1918, why the motion should not be granted.

Ordered further that movant have until the final hearing to prepare a brief of evidence to be approved at the hearing and to be thereafter filed. Ordered further that this order act as a supersedeas in said case, until the final disposition of the motion and the further order of this court.

This 25th April, 1918.

B. F. WALKER,
J. S. C., T. C.

Due and legal service of within motion acknowledged and copy and time waivered and further notice is waivered. April 25th, 1918.

R. C. NORMAN,
Sol. Gen.

The within motion for new trial came on to be heard and was heard at the time and place fixed by previous order, on such hearing I reserved my decision until this day. Now after due consideration I overrule said motion and deny the new trial as prayed.

This 7th day of May, 1919.

B. F. WALKER,
J. S. C., T. C.

29 In Lincoln Superior Court, April Term, 1918.

ROBERT HAWES

vs.

THE STATE.

Motion for New Trial.

Now at the time and place regularly and legally set for the hearing of said motion comes the above movant and by leave of the court amends the same by adding the following grounds:

2nd. Because the court erred in charging the jury as follows: "Now when any such apparatus is found or discovered upon said premises the same shall be prima facie evidence that the person in actual possession had knowledge of the existence of the same and on conviction of the same shall be punished as prescribed in Section 16 of this act, the burden of proof in all cases being upon the person in actual possession to show the want of knowledge of the existence of such apparatus on his premises. All the State is required to show in this case on which you could rest a verdict is to show these apparatus were for the manufacture of the liquor made and set out in the indictment and were on the premises of this defendant and this was in the county of Lincoln and that was within two years prior to the finding of this indictment. When the State shows that, stopping there, that makes out a prima facie case against the defendant and stopping there you will find the defendant guilty as charged in the indictment. When the State shows these facts to your mind to a moral and reasonable certainty you will find the defendant guilty unless the defendant shows to you that it was there without his consent or knowledge. That burden is on the defendant and not the State. It is not for the State to show you who was operating this apparatus but all they have got to show you is that it was operated on this defendant's premises. Then of course if the defendant shows that this apparatus was operated on his premises without any knowledge on his part, that would be a good defense and you would in that event acquit the defendant. Now if you should find these apparatus were on the premises of the defendant the burden would be cast upon him."

Movant shows that this charge is based upon the act of the General Assembly of Georgia entitled, "An Act to amend and supplement the prohibition laws of this State; to make it unlawful to
30 transport, ship or deliver in this state, any spiritous, vinous malt, or fermented liquors, or other intoxicating liquors or beverages, except alcohol and wine under certain restrictions and limitations; to make it unlawful to have, receive, possess or control any such liquors, except alcohol for medicinal, mechanical and scientific purpose, and wine for sacramental purposes under conditions prescribed; to make it unlawful to distill, manufacture or

make any alcoholic, spiritous, vinous, or malted liquors or intoxicating beverages in this State, to provide for the punishment of violators of the provisions of this Act; to provide for the seizure, condemnation and sale of property used in violation of this Act, and for the disposition of the funds arising from such sale; to provide additional fees and costs in cases of conviction for violation of certain provisions of the prohibition laws of this State, the repeal, the Acts approved November 18th, 1915, and of August 19th, 1916, and certain portion of the Act approved Nov. 17, 1915, and for other purposes."

This act was approved March 28th, 1917. It is set forth in Acts of the extra session of the General Assembly of Georgia 1917 on pages 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, as published by law.

In said Act and in Section 22 as thus published is found the following as the law of Ga. "When any such apparatus is found or discovered upon said premises the same shall be prima facie evidence that the person in actual possession had knowledge of the existence of the same and of conviction there-or, shall be punished as prescribed in Section 16 of this Act, the burden of proof in all cases being upon the person in actual possession to show the want of knowledge of the existence of such apparatus on his premises."

This part of said Act is also set forth in Parks Supplemental Code of Ga., 1914, Section 448 QQQ Penal Code.

Movant shows that all part of said section 22 of said Act as above set forth in the foundation of the charge excepted to in the 2nd ground of this amended motion for new trial and that said portion of said Section 22 of said Act is void and unconstitutional and is violative of the following provisions of the Constitution of
31 the U. S., "No person shall be deprived of life, liberty or property without due process of law" and hence is void and should not have been submitted to the jury and to the rights of this movant should not have been affected thereby. Said charge is also in violation of the provisions of Article 1 paragraph 3 of the Constitution of the State of Ga. in that "No person shall be deprived of life, liberty or property, except by due process of law" as found in section 6359 of the Code of Georgia.

The said act and charge of the court placed the burden upon this movant, then the defendant of showing the want of knowledge of the existence of the apparatus on his premises and in fine his innocence of crime with which he was charged. Movant claims that this was an unreasonable and arbitrary exercise of its power by the law-making authority — the State of Georgia.

The whole of said paragraph 22 of said Act is as follows: "Be it further enacted by the authority aforesaid, that it shall be unlawful for any corporation, firm or individual in this State to knowingly permit or allow any one to have or possess or locate on his premises any apparatus for the distilling or manufacturing the liquors and beverages specified in this act. When any such apparatus is found or discovered upon said premises the same shall be prima facie evidence that the person in actual possession had knowledge of the

existence of the same, and on conviction thereof, shall be punished as prescribed in Section 16 of this Act, the burden of proof in all cases being upon the person in actual possession to show the want of knowledge of the existense of such apparatus on his premises."

Movant also claims that this provisions of the law imposed a burden upon him entirely foreign and opposed to the spirit and letter of the laws of Georgia, that in effect it convicted him of a grave crime unless he proved to a court and jury his innocence. A person who was *agronant* would be convicted. In this case the apparatus had just been placed upon the premises and yet under this law this man was bound to know at once that it was on his premises. In additions, the effect of the law is retroa-tive. A man buys a piece of land and while he owns it the Legislature passes an Act and enacts a law
which placed a burden upon his property of a most dangerous
32 character. By merely being the owner and in possession of
a tract of land he may find himself, though ignorant and innocent, convicted of a disgraceful crime.

The Act is also contrary to the general principals of our law, "A crime or misdemeanor, shall consist in a violation of a public law, in the commission of which there shall be a union or joint operation of act and intention, or criminal neglect." In this case the judge in conformity with this law was compelled to charge as above set out.

COLLEY & COLLEY,
Attorneys for Movant.

This amendment allowed and the grounds thereof appeared as correct and true except the first grounds which is stricken by movant.

This May 5th, 1919.

B. F. WALKER,
J. S. C., T. C.

33 Clerk's Office Superior Court of Lincoln County, Ga.

Lincolnton, Ga., June 5, 1919.

I hereby certify, That the foregoing pages, hereto attached, contain a true transcript of such parts of the record as are specified in the bill of exceptions and required by the order of the Presiding Judge, to be sent to the Court of Appeals. Robert Hawes, Plaintiff in error, vs. The State, Defendant in error.

I further certify, That the October Term of said Court, at which said case was tried, adjourned October 30th, 1918. All of which appears from the Records and Minutes of said Court. Witness my signature and the seal of said Court, affixed the day and year first above written.

[SEAL.] W. M. CARTLEDGE,
Clerk Superior Court, Lincoln County, Ga.

Case No. 10656. Court of Appeals of Georgia. March Term, 1919. Hawes, Pl'ff in Error, vs. State, Def't in Error. Transcript of Record. Filed in office this 7th day of June, 1919. W. E. Talley, D. C. C. A. Ga.

Case No. 1628. October Term, 1919. Supreme Court of Georgia. Hawes versus State. Transcript of Record. Filed in office Sept. 5th, 1919. Z. D. Harrison, C. S. C. Ga.

34 Supreme Court.

No. 1628.

HAWES

v.

THE STATE.

By the COURT:

1. Within proper limitations the legislature may enact that when specified facts have been proved they shall be prima facie evidence of the guilt of the accused or of some other named fact essential to the proof of the crime charged. And the provision in section 22 of the act of the legislature passed at the extraordinary session of 1917 and approved March 28, 1917 (Act Ex. Sess. 1917, p. 7), which declares that when certain specified apparatus is found upon the premises of one accused of violating the statute it shall be prima facie evidence that the person in actual possession of the premises referred to had knowledge of the existence of the apparatus on the premises, does not render section 22 of the act referred to violative of the due-process of law clause of the Federal or the State constitution.

2. The evidence authorized the verdict.

BECK, *P. J.*:

The accused was indicated for the offense of knowingly permitting certain person to locate and have on his premises certain apparatus for distilling and manufacturing prohibited liquors and beverages. Upon the trial the jury returned a verdict of guilty. The accused made a motion for a new trial, which was overruled, and he excepted.

1. The motion for a new trial contains the usual general grounds, and the further ground that a specified portion of the court's charge was authorized only by the statute contained in section 22 of the act to amend and supplement the prohibition laws of this State, passed at the extraordinary session of the legislature in 1917 and approved March 28, 1917 (Act Ex. Sess. 1917, p. 7), and the validity of section 22 of the statute referred to is challenged on the ground that it is unconstitutional and violates the due-process of law clause of the Federal and State constitutions, in that it places upon the
35 defendant charged in the indictment with the violation of this section the burden of "showing the want of knowledge of the existence of the apparatus on his premises, and in fine his innocence of the crime with which he is charged; movant claiming that this was an unreasonable and arbitrary exercise of its power by the

legislature of the State of Georgia." It was competent for the General Assembly, in enacting the law in question, to make the enumerated facts prima facie evidence of the defendant's knowledge of the existence of the prohibited apparatus upon his premises. This was not an unwarranted or arbitrary power; and the application of the rule of evidence declared in the statute to appropriate evidence in an appropriate way by the court upon the trial of the case did not violate the constitutional guaranties that no one shall be deprived of his liberty or property without due process of law—a guaranty contained in both the Federal and State constitutions. In the case of Kunsberg v. State, 147 Ga. 591, it was said: "With certain limitations, the legislature may enact that when specified facts have been proved, they shall * * * be prima facie evidence of the guilt of the accused, and shift the burden of proof." This was a restatement of the ruling made in Griffin v. State, 142 Ga. 636. In the latter case it was said: "With certain limitations, the legislature may enact that when specified facts have been proved, they shall, even in a criminal case, be prima facie evidence of the guilt of the accused, and shift the burden of proof. On this power there are limitations, the principal one of which is that the fact or facts which will raise the presumption and shift the burden of proof must have some fair relation to, or material connection with, the main fact as to which the presumption is raised. The inference or presumption from the facts proved must not be merely arbitrary, or wholly unreasonable, unnatural, or extraordinary, but must bear some reasonable relation to the facts proved.

* * * If the legislature should declare that one found in possession of stolen goods shortly after a larceny should be prima facie presumed to be the thief, and that the burden of rebutting the presumption should rest on him, this would be valid, the presumption not being purely arbitrary, but there being a reasonable connection between the possession of the stolen goods and the commission of the larceny. Moreover, the presumption so raised must not be
36 final, but the accused must be allowed a fair opportunity to make his defense and show all of the facts bearing on the issue, and to have the whole case submitted to the jury for decision, after considering all of the evidence as well as the prima facie presumption, if the facts from which it arises have been proved to exist." The facts which raised the presumption and shifted the burden of proof as to the main fact under the indictment in the present case evidently have a fair relation to, and a material connection with, the main fact as to which the presumption is raised. Clearly the existence upon the lands of another which he occupies either as tenant or as owner thereof of distilling apparatus, consisting of the still itself, boxes and barrels, has a clear, natural relation to another named fact necessary to the establishment of the defendant's guilt,—that is, that the owner of the land has knowledge of the existence of such objects upon his land. Further discussion of the question raised by this attack upon the constitutionality of the law in question is unnecessary, as it has been considered in several cases decided by this court. See cases cited in the opinion in the Griffin case, supra.

2. The evidence authorized the verdict.

Judgment affirmed. All the Justices concur, except Gilbert, J., absent for providential cause.

37 Supreme Court of Georgia.

1628.

Atlanta, April 14, 1920.

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

ROBERT HAWES

v.

THE STATE.

This case came before this court upon a writ of error from the superior court of Lincoln county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur, except Gilbert, J., absent for providential cause.

38 Supreme Court of the State of Georgia.

Clerk's Office,
Atlanta, Ga., June 8, 1920.

I hereby certify that the foregoing pages hereto attached contain the original writ of error, citation and acknowledgment of service; also a true and complete copy of the record in the case of Robert Hawes, Plaintiff in Error, vs. The State of Georgia, Defendant in Error, as the same appears from the records and files of this office.

Witness my signature and the seal of the Supreme Court of the State of Georgia hereto affixed the day and year above written.

[Seal of the Supreme Court of the State of Georgia.]

Z. D. HARRISON,
Clerk of the Supreme Court of the State of Ga.

Endorsed on cover: File No. 27,782. Georgia Supreme Court. Term No. 425. Robert Hawes, plaintiff in error, vs. The State of Georgia. Filed June 28th, 1920. File No. 27,782.

FILE COPY

AUG 19 1921
JAMES D. MAHER,
CLERK

In The
Supreme Court of the United States

No. [redacted]95

October Term, 1920

ROBERT HAWES,

Plaintiff in Error,

vs.

THE STATE OF GEORGIA,

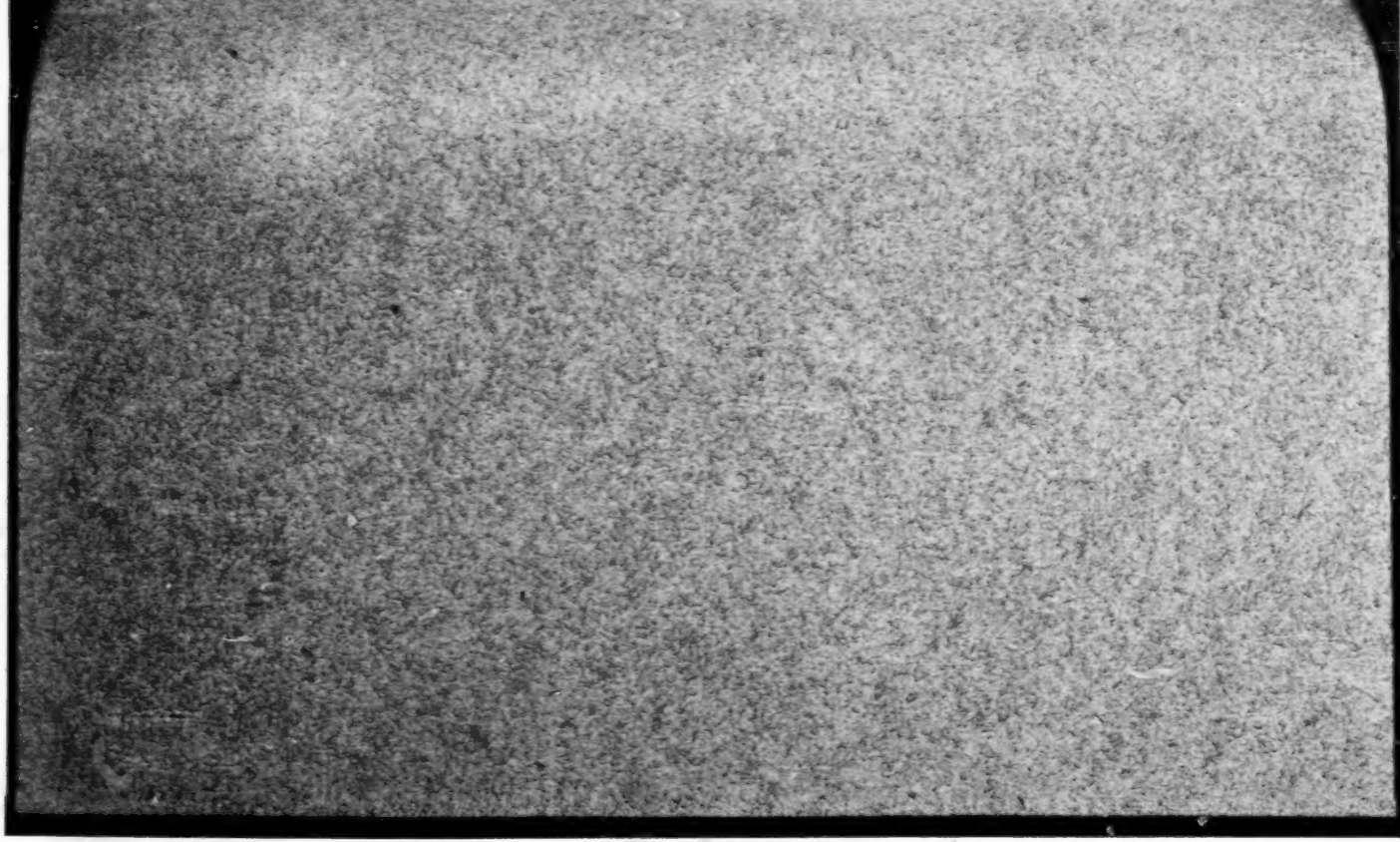
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

BRIEF FOR PLAINTIFF IN ERROR.

F. H. COLLEY,
CARROLL D. COLLEY,
MARION SMITH,
Attorneys for Plaintiff in Error

Johnson-Dallis Co., Printers, Atlanta, Ga.



In the
Supreme Court of the United States

ROBERT HAWES,
Plaintiff in Error,
vs
THE STATE OF GEORGIA
Defendant in Error.

No. 425
October Term, 1920

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA

BRIEF FOR PLAINTIFF IN ERROR

STATEMENT OF CASE

Robert Hawes was indicted in the Superior Court of Lincoln County for the offense of permitting and allowing "a certain person and persons, to the Grand Jury unkown, to have and possess and locate on his premises apparatus to-wit, Bear and a furnace, for the stilling and manufacturing of liquors and beverages specified in the Act of the General Assembly of Georgia, approved March 28th, 1917."

This act is found in the Acts of the General Assembly of 1917, pages 1 to 19 inclusive, and among other things prohibits anyone from allowing apparatus of the kind indicated to be located on his premises.

The constitutional question involved in the present case

arises out of the 22nd section of this act, which is quoted as follows:

> "When any such apparatus is found or discovered upon said premises, same shall be prima facie evidence that the person in actual possession had knowledge of the existence of the same, and on conviction thereof, shall be punished as prescribed in Section 16 of this Act, the burden of proof in all cases being upon the person in actual possession to show the want of knowledge of the existence of such apparatus on his premises."

The proof in the case was about as follows: Robert Hawes and his wife rented a farm in Lincoln County, Georgia. The apparatus for manufacturing liquor was found about 300 yards from the house in which Hawes and his wife lived. A pasture intervened between the house and the still. There was also intervening a hill with some pines on it, so that the still was entirely hidden from view from the dwelling house. It appeared that there was a path that went from the house in the general direction of and nearby the still, but this path had been there for over 20 years.

The evidence stopped at this point. Under the Act of the General Assembly, and indeed under general principles of criminal law, knowledge that the still was located on his property is an essential ingredient of the crime. There was no evidence of knowledge offered, the state relying on the statutory presumption under the 22nd section of the act which has been heretofore quoted.

The defendant's good character and good reputation was proved without contradiction.

In charging the jury, the trial court instructed them that under the 22nd section of the act referred to, the state made out a prima facie case by showing that the still was on the defendant's property without introducing any evidence of knowledge on his part, and that the burden was

thereupon shifted to the defendant to show that he did not know that it was there. An exception was properly taken to this charge presenting the constitutional question hereinafter to be more fully stated. The case was carried to the Supreme Court and the verdict and judgment of conviction were affirmed by the Supreme Court of Georgia.

In presenting the facts bearing on this case, it is necessary to point out that under the law of Georgia the defendant in a criminal case is not allowed to testify as a witness. He is allowed to make an unsworn statement, which according to the state statute, "shall have such force only as the jury may think right to give it." The statute involved is Section 1036 of the Penal Code, and is quoted in full as follows:

> "In all criminal trials the prisoner shall have the right to make to the court and jury such statement in the case as he may deem proper in his defense. It shall not be under oath, and shall have such force only as the jury may think right to give it. They may believe it in preference to the sworn testimony in the case. The prisoner shall not be compelled to answer any questions on cross-examination, should he think proper to decline to answer."

Also, the defendant's wife was, under the Georgia law, not a competent witness in his behalf. Sub-section 4 of Section 1037 of the Penal Code is quoted in full as follows:

> "Husband and wife shall not be competent or compellable to give evidence in any criminal proceeding for or against each other, except that the wife shall be competent, but not compellable, to testify against her husband upon his trial for any criminal offense committed, or attempted to have been committed, upon her person. She is also a competent witness to testify for or against her husband in cases of abandonment of his child, as provided for in Section 116 of this Code.'

It thus appears that by operation of the statutory presumption under Section 22 of the act under which the present indictment was found, the mere presence of the still on the defendant's property created a prima facie presumption that he knew and consented to its presence and operation and cast the burden on him of disproving such knowledge; and it further appears that by the operation of the Georgia Statutes with regard to defendants and their wives as witnesses, both the defendant and his wife were disqualified from testifying to show such lack of knowledge on his part, they being the only two people who were present and could furnish such proof.

SPECIFICATION OF ERRORS RELIED ON

The assignments of errors in this case present in different forms only one constiutional question, viz: that the 22d Section of the Act of the General Assembly of Georgia approved March 28, 1917, hereinbefore quoted and creating the presumption of guilty knowledge from the finding of apparatus for distilling liquors upon premises owned or occupied by the defendant is unconstitutional in that it violates the Fourteenth Amendment of the Constitution of the United States. Both the trial court and the Supreme Court of Georgia enforced this statutory presumption and the same therefore entered into the conviction of the present plaintiff in error.

AUTHORITIES AND ARGUMENT

Certain recent decisions of this court have settled the test to be applied in determining the validity under the Fourteenth Amendment of the Constitution of the United States of a statutory presumption, and render unnecessary

an elaborate inquiry into the general principles of law involved.

It is competent for the legislature to provide by statute that proof of one fact shall authorize a prima facie presumption of another fact on which guilt depends, provided there is a rational connection between the fact proved and the ultimate fact presumed.

Adams v. New York, 192 U. S. 585, 48 L. ed. 575.

Hawkins v. Bleakly, 243 U. S. 210, 61 L. ed. 678.

But it is also settled that where the presumption thus authorized is arbitrary or unreasonable, the statute violates constitutional rights and is void.

Bailey v. Alabama, 219 U. S. 219, 55 L. ed. 191.

McFarland v. American Sugar Refining Co., 241 U. S. 79, 60 L. ed. 899.

The question, therefore, in regard to each particular statute is this: Is the presumption authorized by the statute arbitrary or unreasonable? If it is, the statute is invalid; if not, the statute will be sustained.

Obviously, each case must be determined by a consideration of the particular statute involved. We are unable to find that a statute exactly like the one under consideration has been considered from this standpoint.

It is respectfully submitted that the particular statute is both arbitrary and unreasonable. It is in no way analagous to the statute authorizing a presumption from finding unlawful articles in the possession of the defendant, that is to say, on his person or in his personal possession; such, for example, as the statute considered in *Ng Choy Fong v. United States*, 245 Fed. 305.

The finding of unlawful articles in the personal pos-

session of a man leads irresistibly to the conclusion of his knowledge that he has them and very strongly leads to the conclusion that he intends an unlawful use of them. If the statute in question had provided that finding distilling apparatus in the personal possession of the accused should authorize the inference that he intended to use it to distill liquor, the case would be different.

Even if the statute had been limited to certain classes of property such as city property or buildings or dwellings, the case in behalf of the statute would have been much stronger.

The particular statute takes in all classes of property. If the apparatus is found on *any* property occupied by the accused *anywhere*, he is presumed to have knowingly permitted it to be there. It may be on property remote from his residence. It might even be on property in another county or another portion of the state. It might be placed on property occupied by the accused during a time when the accused was absent from the state. The statute is so drawn that the inference of knowledge may be drawn under circumstances which offend against reason and common sense. Many examples could be given, but the scope of the statute is such that they will readily occur to the court.

Indeed in the present case the distilling apparatus was found on country property some distance from the home of the defendant, who was a tenant on the property, and completely hidden from it by a pine thicket. The apparatus was not in use.

The court will also bear in mind in this connection that the presumption authorized by the statute is one of knowledge. The defendant is presumed to know of the presence of the apparatus. Now, under the Georgia law, the defendant is himself disqualified as a witness, and after a statutory presumption of his knowledge has been created, he is by another statute prevented from testifying to rebut it.

It is true that he is permitted under the Georgia law, as pointed out, to make a qualified statement, but the jury are instructed that this is not evidence in the case. See in this connection the discussion in Bailey v. Alabama of a somewhat similar situation.

Also by another Georgia statute heretofore referred to, the defendant's wife is disqualified as a witness and she and the defendant were the only persons who could have contradicted the presumption which the statute authorized.

About the only recourse left to the accused was to prove his good character. This was clearly shown and not denied, but was ignored by the jury.

Bearing in mind the unlimited application of this statute and the extreme conclusions that may be drawn by this presumption, it is respectfully submitted that the statute is arbitrary and unreasonable. It may be admitted that in some cases there is some slight and attentenuated reason for inferring knowledge from the presence of such apparatus. It some extreme instances (if, for example, the apparatus was found in the defendant's dwelling house occupied by him alone) there might be considerable reason for inferring knowledge, but the present statute goes far beyond any such limites and authorizes conviction of guilt beyond a reasonable doubt in instances where there is no logical connection between the fact proved and the fact presumed. And as applied in this case the presumption goes beyond the limits of reason.

Respectfully submitted,

F. H. COLLEY,

CARROLL D. COLLEY,

MARION SMITH,

Attorneys for Plaintiff in Error.

FILE COPY

FILED
JAN 20 1922
WM. R. STANSBURY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1920.

No. 795

ROBERT HAWES,
Plaintiff in Error

vs.

STATE OF GEORGIA,
Defendant in Error.

BRIEF FOR THE DEFENDANT IN ERROR.

GEO. M. NAPIER,
Attorney General;

SEWARD M. SMITH,
Assistant Attorney General.

P. O. Address:
Atlanta, Ga.



IN THE

Supreme Court of the United States

OCTOBER TERM, 1920.

No. 425.

ROBERT HAWES,
Plaintiff in Error

vs.

STATE OF GEORGIA,
Defendant in Error.

STATEMENT OF FACTS

The indictment followed the statute. The fact that apparatus for distilling liquor was found on the premises occupied by the defendant shifted the burden to him.

The evidence satisfied the jury. The jury believed the truth of the case as made.

The defendant was tried in accordance with the statutes and the criminal procedure of the State of Georgia.

The Supreme Court of the State held that "the evidence authorized the verdict."

BRIEF WITH REFERENCE TO THE LAW

By the statute, persons occupying land have imposed upon them the obligation to prevent the location of apparatus to make liquor on the lands under their control.

In the opinion of the Supreme Court of Georgia denying a new trial in this case, it was well said:

> "The facts which raised the presumption and shifted the burden of proof as to the main fact under the indictment in the present case evidently have a fair relation to, and a material connection with, the main fact as to which the presumpton is raised. Clearly the existence upon the lands of another which he occupies either as tenant or as owner thereof of distilling apparatus, consisting of the still itself, boxes and barrels, has a clear, natural relation to another named fact necessary to the establishment of the defendant's guilt; that is, that the owner of the land has knowledge of the existence of such objects upon his land. Further discussion of the question raised by this attack upon the constitutionality of the law in question is unnecessary, as it has been considered in several cases decided by this court. See cases cited in the opinion in the Griffin case. 142 Ga. 636."
>
> Hawes vs. The State, 103 S. E. Page 171.

There is really but one question before the court in the instant case. Is the presumption created by the statute reasonable in this case?

It is quite as reasonable as the presumption that one found in possession of goods recently stolen is presumed to be the thief.

The burden is shifted upon the presumptive thief, but he is given the opportunity of satisfying a jury as to his guilt or innocence.

So the presence of the "still," the boxes, barrels, the "worm" etc., on a man's land creates a reasonable presumption that he knew or should have known of the presence of these **outlawed articles** upon his premises.

Yet he was given a fair trial before a jury of his country, and they pronounced him guilty. The highest court in the State held that the verdict was warranted by the evidence.

This court also held that the statute involved was not an arbitrary or unreasonable exercise of its powers by the Legislature of Georgia.

The Defendant had a regular judicial trial, under the rules of evidence fixed by the Legislature of the State of Georgia.

> "The State may provide what may be presumptive evidence of guilt."
>
> State vs. Cunningham, 25 Conn. Page 195.

> "This court has frequently recognized the general power of every legislature to prescribe the evidence which shall be received, and the effect of that evidence, in the courts of its own government."
>
> Bailey vs. Alabama, 55 L. Ed. Page 238.

We respectfully urge that the presumption involved is **not an arbitrary** inference; that there was a rational relation between the presence of the apparatus and the guilt of the defendant; and "that the accused was not deprived of a proper opportunity to submit all the facts bearing upon the issue."

And we respectfully contend that the verdict and judgment should not be disturbed.

Respectfully submitted,

GEO. M. NAPIER,
Attorney General.

SEWARD M. SMITH,
Assistant Attorney General.

SUPREME COURT OF THE UNITED STATES.

No. 95.—October Term, 1921.

Robert Hawes, Plaintiff in Error, vs. The State of Georgia.	In Error to the Supreme Court of the State of Georgia.

[February 27, 1922.]

Mr. Justice McKenna delivered the opinion of the Court.

Indictment against Hawes under the law of Georgia for the offense of knowingly permitting certain persons to locate and have on his premises apparatus for distilling and manufacturing prohibited liquors and beverages.

A verdict of guilty was rendered. A motion for new trial was made and denied which action and the judgment of the trial court were affirmed on appeal by the Supreme Court of the State.

The Act of the State upon which the indictment was based made it unlawful, among other things, "to distill, manufacture or make any alcoholic spirits, vinous or malted liquors or intoxicating beverages" in the State.

Section 22 of the Act provides that when any apparatus used for such purposes "is found or discovered upon said premises the same shall be prima facie evidence that the person in actual possession had knowledge of the existence of the same, and on conviction thereof, shall be punished as prescribed in section 16 of this Act, the burden of proof in all cases being upon the person in actual possession to show the want of knowledge of the existence of such apparatus on his premises."

The trial court instructed the jury that Hawes was charged with knowing who had the apparatus upon the premises of which he was in possession or who operated it, and that under the Act the burden was upon him to show the want of knowledge. And further, that all that the State had to show was that the apparatus was on the premises, and "When the State shows that, stopping there that makes out a *prima facie* case against defendant and you should find the defendant guilty as charged in the indictment" un-

less he show that it, the apparatus, was there without his consent and knowledge.

The charge was made the basis of a motion for new trial on the ground that it was offensive to the due process clause of the Constitution of the United States and also of the Constitution of Georgia. The same grounds were assigned in the Supreme Court of the State on appeal from the order and judgment denying the motion for new trial.

In the Supreme Court the specific error against the charge of the court was that it cast upon Hawes the burden of "showing the want of knowledge of the existence of the apparatus on his premises, and in fine his innocence of the crime with which he is charged," he, "claiming that this was an unreasonable and arbitrary exercise of its power by the legislature of the State of Georgia."

And this is the assignment here, in other words, that Section 22 creates a presumption of guilty knowledge from the finding of the apparatus upon premises occupied by him, and that both the trial court and the Supreme Court of Georgia enforced this statutory presumption and the same therefore, entered into his conviction, and that the Fourteenth Amendment to the Constitution of the United States was thereby violated.

In aid of his contention and in emphasis of the effect of the statute against him, Hawes points out that a defendant in a criminal case is not allowed to testify as a witness, that he has only the right to make a statement not under oath, and that husband and wife are not competent or compellable to give evidence in any criminal proceeding for or against each other.*

*Section 1036 of the Penal Code is as follows: "In all criminal trials the prisoner shall have the right to make to the court and jury such statement in the case as he may deem proper in his defense. It shall not be under oath, and shall have such force only as the jury may think right to give it. They may believe it in preference to the sworn testimony in the case. The prisoner shall not be compelled to answer any questions on cross-examination, should he think proper to decline to answer."

Section 1037 of the Penal Code is as follows: "Husband and wife shall not be competent or compellable to give evidence in any criminal proceeding for or against each other, except that the wife shall be competent, but not compellable, to testify against her husband upon his trial for any criminal offense committed, or attempted to have been committed, upon her person. She is also a competent witness to testify for or against her husband in cases of abandonment of his child, as provided for in Section 116 of this Code."

It has been decided, as counsel concede, that the legislature may make one fact *prima facie* evidence of another, and it is certainly within the established power of a State to prescribe the evidence which is to be received in the courts of its own government. *Adams* v. *New York*, 192 U. S. 585, 588.

In *Hawkins* v. *Bleakley*, 243 U. S. 210, 214, it is said, "the establishment of presumptions, and of rules respecting the burden of proof, is clearly within the domain of the state governments, and that a provision of this character, not unreasonable in itself and not conclusive of the rights of the party, does not constitute a denial of due process of law. *Mobile, Jackson & Kansas City R. R. Co.* v. *Turnipseed*, 219 U. S. 35, 42."

Undoubtedly there must be a relation between the two facts. *Bailey* v. *Alabama*, 219 U. S. 219; *McFarland* v. *American Sugar Refining Company*, 241 U. S. 79. That is, if one may evidence the other, there must be connection between them, a requirement that reasoning insists on and, necessarily, the law.

We think the condition is satisfied by the Georgia statute. Distilling spirits is not an ordinary incident of a farm and in a prohibition State has illicit character and purpose, and certainly is not so silent and obscure in use that one who rented a farm upon which it was or had been placed would probably be ignorant of it. On the contrary, it may be presumed that one on such a farm or one who occupies it will know what there is upon it. It is not arbitrary for the State to act upon the presumption and erect it into evidence of knowledge; not peremptory, of course, but subject to explanation, and affording the means of explanation. Hawes had such means. An explanatory statement was open to him with a detail of the circumstances of his acquisition of the place, and he availed himself of it. He could have called others to testify to the circumstances of his acquisition for the circumstances were not so isolated or secret as not to have been known to others.

We agree, therefore, with the Supreme Court of the State that the existence upon land of distilling apparatus, consisting of the still itself, boxes, and barrels, has a natural relation to the fact that the occupant of the land has knowledge of the existence of such objects and their situation.

The principle and the presumption depending upon it were certainly not strained against Hawes. To the comment of the Court we may add that the distilling apparatus was within 300 yards of his house. It is true, that a pasture intervened, it was testified, between it and his house and then "a hill with pines growing on it and there was a descent down a hill to where the still was located" though "it could not have been seen from the house but smoke arising from it could have been seen. There was across the pasture a path leading towards the still." It was added, however, "that the path might have been made by cattle or stock." And a witness testified that the path was old.

Judgment affirmed.

Mr. Justice PITNEY took no part in the consideration and decision of this case.

A true copy.

Test:

Clerk Supreme Court, U. S.